

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP
OF PORTLAND IN OREGON, AND
SUCCESSORS, A CORPORATION
SOLE, dba the ARCHDIOCESE
OF PORTLAND IN OREGON,

Debtor.

O R D E R
Civ. No. 09-1396-AA
Bankruptcy Case No. 04-37154-elp11

AIKEN, Chief Judge:

This case presents two issues.¹ First, is whether the Bankruptcy Court erred in determining that the January 14, 2005 Protective Order should be lifted as to records relating to Fathers M and D, including deposition transcripts and exhibits identifying Fathers M and D. The second issue is whether the

¹ This court has jurisdiction pursuant to 28 U.S.C. section 158(a)(1), which confers a district court with jurisdiction to hear appeals from final orders of bankruptcy judges.

1 Bankruptcy Court erred in finding that Various Tort Claimants'
2 ("Appellees") interest in having Fathers M and D's records
3 released into the public domain outweighed their privacy
4 interests in those records. I find no error by the Bankruptcy
5 Court and therefore affirm the Bankruptcy Court's Order.

6 DISCUSSION

7 This case was originally filed on July 6, 2004. The
8 background and history of this matter is well known to all
9 parties and participants. It will not be repeated here.

10 A Protective Order was entered by the Bankruptcy Court that
11 allowed the Archdiocese to designate as "confidential" documents
12 produced pursuant to the Bankruptcy Court's "Order Regarding
13 Premediation Discovery by Tort Claimants," that required the
14 Archdiocese to produce to tort claimants the personnel files of
15 accused clergy and depositions of key Archdiocese officials.²
16 Documents subject to the Protective Order were filed under seal
17 in the bankruptcy case including documents pertaining to Father
18 M and Father D. In December 2006, the bankruptcy case and most
19 of the tort claims were settled. The terms of the settlement,
20 however, did not include the release of documents by the
21 Archdiocese. Therefore, on February 13, 2007, Tort Claimants'
22 counsel invoked paragraph 7 of the Protective Order and notified
23 the Archdiocese that all personnel records from all clergy files
24 would be released.³ On February 26, 2007, the Archdiocese and
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26 ² Those Orders were entered on January 14, 2005, Docket #797,
#799.

27 ³ Paragraph 7 of the Protective Order provides:
28 In the event that tort claimants wish to remove from
the restrictions of this order any document designated

1 nine priests filed motions to prevent the release of the records.
2 The parties then reached an agreement to undergo a
3 mediation/arbitration process for releasing documents with Judge
4 Hogan serving as the binding arbitrator. The motions filed by
5 the Archdiocese and priests were later declared moot by the
6 Bankruptcy Court. A breakdown in the mediation process occurred
7 after the Archdiocese released only some of the documents at
8 issue. In February 2008, the Tort Claimants ultimately filed a
9 Motion to Unseal Docket Nos. 4765 and 4766. After extensive
10 briefing and several hearings, the Bankruptcy Court reviewed each
11 of the thousands of pages of documents proposed for release or
12 unsealing. The Bankruptcy Court then issued a thorough, well
13 reasoned and well supported 37-page Opinion authorizing the
14 release of many of the identified documents and the unsealing of
15 much of Docket Nos. 4765 and 4766, subject to specified
16 redactions. See Excerpt of Record ("ER") 9. Among the documents
17 authorized for unsealing and/or release were some pertaining to
18 allegations that Father M and Father D had sexually abused minors
19 while serving in ministries of the Archdiocese. Specifically
20 regarding the Father M and Father D documents, the Court noted:

21 the documents counsel seeks to release show that
22 there were credible allegations of abuse made.
23 In the case of Fr. M, the allegations were brought
24 to the attention of the district attorney, who did

24 as "Confidential" by Debtor pursuant to this order,
25 tort claimants shall provide prior written notice to
26 Debtor's counsel and counsel for the priest whose
27 file is at issue, if any. Counsel shall have seven
28 (7) days to file a motion with the court seeking an
order preventing the disclosure of such document.
The document or documents shall remain subject to this
order unless the court rules otherwise following the
filing of counsel's motion.

1 not prosecute because of the statute of limitations,
2 not because the allegations lacked credibility.
3 In the case of Fr. D, he admitted the conduct
4 to the Archbishop. Saying they had no "claims"
5 brought against them is technically correct in
6 the bankruptcy sense, but is misleading because
7 they both had credible allegations of sexual
8 misconduct with minors brought against them.

9 ER 9, p. 25.

10 The Court concluded: "Fr. M's and Fr. D's desire to be
11 protected from scandal does not demonstrate a clearly defined and
12 serious injury outweighing the public interest necessary to
13 establish good cause." Id. at p. 26.

14 First, I find that the Bankruptcy Court properly allocated
15 the burden of maintaining the protection of the disputed
16 documents subject to the Protective Order to Fathers M and D.
17 Second, I find that the Court did not abuse its discretion when
18 finding Fathers M and D failed to met their burden.

19 Fed. R. Civ. P. 26(c) places the burden of proof to
20 demonstrate the need for protection on the party seeking
21 protection.⁴ As the Bankruptcy Court noted, it never made a "good
22 cause" finding prior to entering the Protective Order.
23 Therefore, pursuant to Rule 26(c), the burden remains on the
24 party seeking protection, here the Appellants. See also,
25 Bromgard v. Montana, 2007 WL 2710379, *6 (D. Mont. 2007) ("the
26 Ninth Circuit has held that where, as here, a non-party seeks
27 modification of a protective order, the party opposing
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⁴ Rule 26(c) states: "[a] party or any person from whom discovery is sought may move for a protective order in the court where the action is pending - or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken[.] The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]"

1 modification bears the burden of showing 'good cause' for
2 continuing protection") (citing Beckman Industries, Inc. v.
3 International Ins. Co., et al., 966 F.2d 470 (9th Cir.), cert.
4 denied, 506 U.S. 868 (1992)). Here, the parties stipulated to
5 the entry of a broad protective order without making a
6 particularized showing of good cause. Therefore, the Bankruptcy
7 Court did not err in imposing the burden of continuing the
8 protection on the parties seeking it - Appellants here.

9 The Bankruptcy Court's modification of the protective order
10 is reviewed for abuse of discretion. Phillips v. General Motors
11 Corp., 307 F.3d 1206, 1210 (9th Cir. 2002). The Bankruptcy Court
12 individually reviewed every page of the thousands of pages of
13 documents proposed for release and then justified its reasons for
14 authorizing or not authorizing release in a comprehensive and
15 lengthy Opinion. I find no abuse of discretion here.

16 Finally, I also find the Bankruptcy Court did not abuse its
17 discretion in authorizing the release of the deposition
18 transcripts and accompanying exhibits. The transcripts of the
19 depositions of key Archdiocese officials were not subject to the
20 protective order. ER 9, p. 35. Nevertheless, the Tort Claimants
21 advised the Archdiocese and clergy that the transcripts would be
22 released absent entry of a protective order to provide them with
23 an opportunity to seek protection. None of them did so including
24 Fathers D and M.

25 CONCLUSION

26 The Bankruptcy Court's Order, filed July 13, 2009, lifting
27 the Protective Order at issue, lifting the seal on filed
28 documents, and authorizing the release of deposition transcripts

1 and exhibits, is AFFIRMED (Bankruptcy Appeal #8). Further,
2 Appellants Fathers M's and D's request for oral argument (doc.
3 5818) is denied as unnecessary.

4 IT IS SO ORDERED.

5 Dated this 2 day of February 2010.

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8
9 /s/ Ann Aiken
10 Ann Aiken
United States District Judge
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